IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6043 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI LAXANBHAI KHODA

Versus

CIRCLE OFFICE

Appearance:

MR JK PARMAR for Petitioner

MR MA BUKHARI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution the petitioner has brought under challenge the order dated October 30, 1987, Annexure 'E' to the petition, passed by Additional Chief Secretary, Revenue Department (Appeals), Ahmedabad in exercise of revisional jurisdiction by which permission to admit

revision application was withdrawn and confirmed the order dated September 25, 1987, Annexure 'D' to the petition, passed by the Collector, Bhavnagar, in exercise of appellate jurisdiction.

2. The petitioner was given land bearing S.No. 633 admeasuring 3 A. 23 Gs. and S.No. 665 admeasuring 2A. 0 Gs. (total 5 A. 23 Gs.) of village Gadhada, Taluka Gadhada, District Bhavnagar by the Collector of Bhavnagar on 24.11.1962 for personal cultivation of vegetable and for rearing fruit trees. The grant of the land was subject to the terms and conditions mentioned in the said order. The petitioner cultivated on the said land since then and he is in lawful possession of the said land. However, according to the petitioner, the Assistant Collector, Palitana passed an order dated March 31,1987 resuming the land to the Government on the ground that the grantee i.e., petitioner in violation of the order took cash crop from the land. Aggrieved by the said order the petitioner preferred appeal before the Collector, Bhavnagar. The Collector, Bhavnagar, after hearing the parties, dismissed the said appeal vide order dated September 25, 1987. The petitioner went in Revision before the Additional Chief Secretary, Revenue Department (Appeals), and the Additional Chief Secretary vide order dated October 30, 1987 withdrawn the permission to admit the revision application by confirming the order of Collector. Aggrieved by the aforesaid orders this petition is filed.

3. It is contended by the learned advocate Mr. Parmar for the petitioner that prior to the order passed by the Assistant Collector, Palitana, for resuming the land to the Government, notice to show cause was not given to the petitioner. It is also contended that the original order of grant of land also does not contain any such condition. It is further contended that from 24.11.1962 to March 31, 1987 the petitioner was in possession of the said land without any disturbance and he came to know about the said order only when the notice dated 30.4.1987 issued by the Circle Office, Gadhada was served upon him and, therefore, all the orders came to be passed without giving him opportunity of hearing and thereby the principles of natural justice have been violated. He, therefore, contended that all the orders were passed in total disregard to principles of natural justice and hence are liable to be struck down by issuing a writ of certiorari or any other appropriate writ, order or direction.

4. On behalf of the respondents reply affidavit was

not filed. However, learned A.G.P. Mr. Bukhari placed reliance on the orders annexed to the petition and contended that on perusal of the orders it cannot be said that opportunity of hearing was not given to the petitioner and, therefore, there is no question of violation of the principles of natural justice as sought to be canvassed by the petitioner. He further contended that since the petitioner has committed breach of the terms and conditions of the grant of the land and has taken cash crop from the land instead of cultivating land for rearing fruit trees and vegetables, the orders passed by the authorities below do not suffer from any infirmity and the same are not liable to be struck down and, therefore, the petition may be rejected.

5. The land bearing S.No. 663 admeasuring 3 A. 23 Gs. and land bearing S.No. 665 admeasuring 2 A. 0 Gs. (total 5 A. 23 Gs.) of village Gadhada, Taluka Gadhada, District Bhavnagar, was granted in favour of the petitioner as a new tenure land by the Collector Bhavnagar vide order dated 24.11.1962 for rearing fruit trees and vegetable. Though the said fact has been stated in the petition the original order has not been annexed with the petition. The contention of the petitioner that the original order of grant in fact does not contain any such condition cannot be accepted in view of the specific averment made in the petition by the petitioner by swearing it on oath. For the aforesaid contention the petitioner has placed reliance on annexure B to the petition. On perusal of the same it cannot be accepted that it is the original order granted by the Collector. It is in fact a Kabuliyat patrak written by the petitioner under Land Revenue Rules 37, 43 and 52 whereby the petitioner i.e., grantee of the land has in terms agreed to accept any fine or penalty if he commits breach of any of the conditions of the order granting him the land. On perusal of this document the contention of the petitioner that the original order of grant in fact does not contain any such condition cannot be accepted as this is not the original order granted by the Collector and it is for the petitioner to produce before the Court. At the cost of repetition I may state that since the petitioner has in terms averred in para 1 of the petition that said land was granted to him for cultivation of vegetable Bakalu and for rearing fruit trees, the petitioner cannot resile from the averments made in the petition. This clearly proves that the said land was granted to the petitioner for the purpose of cultivating vegetable Bakalu and rearing fruit trees.

6. Now the next question which falls consideration

is whether the petitioner has committed breach of the terms and conditions of the order by which he was granted the land. On perusal of xerox copy of the Pahnipatrak, Annexure A to the petition it is seen in the column of cultivation whereunder in terms it is stated that from 1973 onwards upto 1986-87 the petitioner cultivated Bajri, cotton, Juvar, ground nut and vegetable. Therefore there is no difficulty in coming to the conclusion that the petitioner did cultivate cash crop also besides vegetable. It is contended by the petitioner that he had reared 20 plantains (kela thads), 200 mango trees, chikku trees, lemon trees, coconut trees, etc. but because of the devastating cyclone which affected the area they were destroyed and the same was noted by the Talati in the Pahni Patrak. On perusal of the copy of the Pahnipatrak it is no where stated that the petitioner had ever reared up any fruit tree on the land. If the petitioner had ever reared vegetable and fruit trees, the Talati would have definitely mentioned the said fact in the Pahnipatrak. As observed hereinabove, on perusal of the copy of the Pahnipatrak since 1972 to 1986-87 the petitioner has been cultivating cash crops besides vegetables. Therefore, it cannot be gainsaid that the petitioner has committed breach of the terms and conditions of the order of grant of the land.

7. Then it was contended on behalf of the petitioner that while recording the impugned order dated March 31, 1987 the Assistant Collector has not given him opportunity of hearing. On perusal of the said order the aforesaid contention also cannot be given ay countenance. The Assistant Collector has in terms recorded that after adjourning the case to 17.3.1987 notice was served on the parties. The matter does not rest here. The petitioner personally remained present and stated before the Assistant Collector that the land was granted to him as new tenure land and he was cultivating vegetable in the said land. But as there was no water in the well at that time he was cultivating crop of juvar, bajra, etc. He denied that the said land was granted to him for the purpose of rearing fruit trees and he has committed any beach of the terms and conditions of the order by which land was granted to him. In view his admission the Assistant Collector has resumed the land to the Government vide a reasoned order dated March 31, 1987 observing that the grantee has in violation of the order took cash crops from the land. Against the impugned order the petitioner went in appeal before the Collector, Bhavnagar. On perusal of the said order it cannot be said that the said order was recorded without hearing the petitioner. The Collector after hearing the petitioner

dismissed the appeal vide order dated September 25, 1987. The petitioner preferred revision against the said order before the Additional Chief secretary, Revenue Department (Appeals) which also met with the same fate.

8. On perusal of the impugned orders it is very difficult to accept the contention of the petitioner that he has not committed breach of the terms and conditions of the order by which he was granted the land nor can it be said that opportunity of hearing was not given to him before recording the order. On the contrary the petitioner himself has admitted before the Assistant Collector that because of paucity of water he started cultivating cash crop on the land. In view of the aforesaid state of affairs I am of the opinion that the authorities below have not committed any error of law or facts in recording the order resuming the land to the Government as the petitioner has committed breach of the terms and conditions of the order of grant of land.

9. In the case of Khanna Improvement Trust v. Land Acquisition Tribunal and others, (1995) 2 SCC 557, Supreme Court has held that while exercising powers under Article 226 of the Constitution of India High Court must confine itself to correcting any error of jurisdiction committed by the Tribunal and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the Tribunal. It is also settled principle of law in view of the decision of the Supreme Court in the case of H.B. Gandhi v. M/s. Gopinath, reported in (1992) Supp.2 SCC 312 that judicial review is a review of decision making process and not the decision itself and the High Court cannot reappreciate the primary or perceptive facts found by the fact-finding authority under the statute.

10. In view of settled principle enunciated by the Supreme Court in aforementioned two judgments, the High Court can interfere while entertaining writ petition filed under Article 226 only when it finds that authority below or Tribunal has committee jurisdictional error or mistake and it is not open for High Court to re-appreciate or re-apprise the primary or perceptive facts found by the fact-finding authority under the statute and in the instant case as observed in earlier paragraph of this judgment, no mistake or error is committed by the authorities below.

11. For the reasons recorded hereinabove, there is no merit in the petition which is liable to be rejected.

12. In the net result, the petition is rejected, however, with no order as to costs. Rule is discharged. Interim relief shall stand vacated.

7.4.2000. (A.M. Kapadia, J.)

(karan)